NO. 48706-3-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

NORTH QUINAULT PROPERTIES, LLC, a Washington limited liability company; THOMAS LANDRETH, an individual, and BEATRICE LANDRETH,

Appellants,

v.

STATE OF WASHINGTON, PETER GOLDMARK, in his official capacity as Commissioner of Public Lands,

Respondents.

RESPONSE BRIEF OF STATE OF WASHINGTON AND COMMISSIONER OF PUBLIC LANDS PETER GOLDMARK

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

I. INTRODUCTION

At the heart of this case is a dispute between the Appellants, North Quinault Properties, LLC, and Thomas and Beatrice Landreth (Landreths), and the Quinault Indian Nation (Nation) over Lake Quinault (the Lake). The Landreths, however, brought this action against the State of Washington and Commissioner of Public Lands Peter Goldmark (State) seeking to have the Court order the State to do what they cannot: to take an undefined enforcement action against the Quinault Indian Nation, under the guise of a public trust doctrine obligation, to divest the Nation of its asserted interest in Lake Quinault which the Nation claims as part of its reservation created by the 1856 Treaty of Olympia and 1873 Executive Order by President Ulysses S. Grant.

Before the trial court, the Landreths requested three different forms of relief: (1) a declaration under the Uniform Declaratory Judgments Act, RCW 7.24 (UDJA), regarding the applicability of the public trust doctrine to Lake Quinault; (2) a writ of mandate ordering the State to take some vague action regarding the public trust doctrine at Lake Quinault; and (3) injunctive relief. The trial court properly denied these claims and granted summary judgment to the State.

What the Landreths continue to seek is a declaration that Lake Quinault is a public trust resource, and based on that declaration a writ of

mandamus and an injunction requiring the State to take some unspecified action against the Nation. However, any such relief would have the effect of determining the Nation's ownership interest in the Lake without it or the United States as parties. Accordingly, the trial court properly determined that it could not, as a matter of law, grant the Landreths' requested relief. This decision was correct, and the State respectfully requests that this Court affirm the trial court's order in its entirety.

II. COUNTERSTATEMENT OF THE ISSUES

1. Was the trial court correct as a matter of law that the Landreths are not entitled to declaratory relief under the UDJA because the Quinault Indian Nation and the United States are necessary and indispensable parties under RCW 7.24.110 that cannot be joined and because review of how the State is applying or administering state law is not available under the UDJA?

2. Was the trial court correct as a matter of law that the Landreths are not entitled to a writ of mandamus because such a writ is not available to compel a state official to take discretionary action and is also not available to order general compliance with state law?

3. Did the trial court properly exercise its discretion in concluding that the Quinault Indian Nation, which asserts an interest in Lake Quinault as part of its reservation, and the United States, which is the

trustee for the Nation, are necessary and indispensable parties under CR 19 that cannot be joined?

4. Did the trial court properly exercise its discretion in denying the Landreths' request for injunctive relief?

III. COUNTERSTATEMENT OF THE CASE

A. Factual Background.

The Landreths, who own property adjacent to Lake Quinault, have had a dispute with the Quinault Indian Nation over access to the Lake. CP at 317-21. The Nation asserts ownership of the Lake based on its treaty rights under the 1856 Treaty of Olympia and subsequent Executive Order of President Grant in 1873. CP at 92; CP at 120-33; CP at 327-28; CP at 335-39.

The Nation's asserted rights predate Washington's entry into the Union in 1889, and the Nation has argued that the United States transferred the beneficial interest in the bedlands of Lake Quinault to it under the Treaty of Olympia. CP at 135-36. Simply put, the Nation asserts ownership over the Lake as part of its reservation. *Id.* That the Nation claims such interests in Lake Quinault is uncontested. Br. of Appellant at 1.

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B. Proceedings Below.

On December 30, 2014, the Landreths filed a Verified Complaint for Declaratory Judgment, Injunctive Relief and Damages (Federal Complaint) in the U.S. District Court for the Western District of Washington. CP at 57-87. The Landreths brought their Federal Complaint against the Quinault Indian Nation, the State of Washington, and the Department of Natural Resources (DNR). *Id.* The basis of Landreths' Federal Complaint was a dispute with the Quinault Indian Nation over access to Lake Quinault. CP at 57-96.

The Landreths' Federal Complaint alleged that the Quinault Indian Nation deprived them of access to Lake Quinault, and sought declaratory and injunctive relief from the court based on their argument that the bed of Lake Quinault is owned by the State of Washington, and that the Nation has no right, title, or legal interest in the Lake. CP at 57-87. The Landreths also sought damages from the Nation, the State, and DNR. *Id.*

The Nation, the State, and DNR subsequently filed motions to dismiss the Landreths' Federal Complaint. CP at 88-96; CP at 100-01. The Nation argued that it was immune from suit because of its sovereign immunity, and also argued that the United States was a necessary and indispensable party that could not be joined. CP at 88-96. The State and

DNR asserted their immunity from suit in federal court under the Eleventh Amendment of the United States Constitution. CP at 100-01.

By orders dated May 4, 2015, U.S. District Court Judge Ronald B. Leighton granted the motions to dismiss. CP at 97-101. The District Court subsequently entered its judgment on June 9, 2015. CP at 102.

On September 21, 2015, the Landreths initiated the present action against the State of Washington and Commissioner of Public Lands Peter Goldmark in the Thurston County Superior Court. CP at 5-35. CP at 317-21. As with their previous Federal Complaint, the Landreths in this matter allege that the Quinault Indian Nation has blocked their access to Lake Quinault. CP at 30-32. The Landreths assert that Lake Quinault is owned by the State of Washington, and seek a declaration to that effect. CP at 33-34. The Landreths also seek an order requiring the State to take some form of action to assert their alleged rights under the public trust doctrine. *Id.* The Landreths asked the trial court to grant them relief under the UDJA, issue a writ of mandate against Commissioner Goldmark, and grant them injunctive relief. CP at 24-34.

The Quinault Indian Nation subsequently filed a motion to submit an *amicus curiae* brief before the trial court. CP at 134-38. CP at 324-39.

The trial court granted this motion and allowed the Nation to appear as an amicus. CP at 307-08.

On February 4, 2016, the State filed a Motion for Summary Judgment which was heard by the Honorable Anne Hirsch. CP at 103. By order dated March 4, 2016, Judge Hirsch granted the State's motion in its entirety and dismissed the Landreths' suit with prejudice. CP at 309-13.

The trial court concluded as a matter of law that the Nation and the United States were necessary and indispensable parties under RCW 7.24.110, and that it therefore could not proceed under the UDJA; that review is not available under the UDJA to challenge how the State is applying or administering state law; and that a writ of mandamus is not available to order discretionary acts or general compliance with state law. CP at 310-13. Moreover, the trial court determined that, under the balancing test of CR 19, the Nation and the United States were necessary and indispensable parties that could not be joined because of their sovereign immunity. *Id.* The trial court also denied the Landreths' request for injunctive relief. CP at 312. The Landreths subsequently appealed this decision.

IV. SUMMARY OF ARGUMENT

The Quinault Indian Nation asserts an interest in Lake Quinault, claiming it as part of its reservation created prior to Washington becoming

a state in 1889. The Nation asserts this interest based on the 1856 Treaty of Olympia and the 1873 Executive Order which established the Nation's reservation.

The Landreths seek three forms of relief regarding the public trust doctrine at Lake Quinault: (1) declaratory relief under the Uniform Declaratory Judgments Act; (2) a writ of mandate ordering the State to take an unspecified action at Lake Quinault; and (3) injunctive relief. All of these claims fail.

First, the claims under the UDJA fail as a matter of law because the Landreths cannot join the Quinault Indian Nation and the United States, who are necessary and indispensable parties. Joinder of such parties is statutorily required under RCW 7.24.110 of the UDJA. That the Nation claims ownership interests in Lake Quinault is undisputed, and the trial court properly determined that it could not proceed without prejudicing the rights of the Nation, and the United States as the Nation's trustee. The trial court also correctly determined that the UDJA does not allow review of how the State or its officials are applying or enforcing state law, which is exactly what the Landreths' are asking the Court to do regarding Lake Quinault.

Second, the Landreths' petition for a writ of mandamus fails because such a writ is not available to order acts of discretion, nor will

such a writ issue to generally order a State official to comply with state law. How the State assesses the claims of the Quinault Indian Nation, as well as how the State balances competing uses under the public trust doctrine, involves significant discretion. Moreover, the Landreths request a vague writ ordering the State to enforce some type of public access rights at Lake Quinault. Presumably, this would entail initiating some form of enforcement or litigation against the Nation. Nothing in the public trust doctrine provides a mandatory duty requiring the State to intervene in this dispute. Accordingly, the trial court properly denied the Landreths' petition for a writ of mandamus.

In addition, the trial court properly denied the Landreths' mandamus and injunctive relief claims under CR 19. There is no way for a court to proceed in this matter without first determining that the State of Washington owns the bed of Lake Quinault, which would entail determining the Nation's rights to the Lake. Under the circumstances, the trial court properly concluded that both the Quinault Indian Nation and the United States are necessary and indispensable parties that, because of their sovereign immunity, cannot be joined.

Finally, the trial court did not abuse its discretion by denying the Landreths' injunctive relief. What the Landreths seek is an unprecedented expansion of the public trust doctrine in a manner that is not supported by

state law. The Landreths have no clear legal or equitable right to their requested injunctive relief, and this Court should affirm the trial court's decision.

V. STANDARD OF REVIEW

The appellate court reviews an order of summary judgment de novo. *Western Telepage, Inc. v. City of Tacoma Dep't of Financing*, 140 Wn.2d 599, 607, 998 P.2d 884 (2000). Summary judgment is appropriate only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. *See* CR 56(c). A material fact is one that affects the outcome of the litigation under governing law, and "when reasonable minds could reach but one conclusion, questions of fact may be determined as a matter of law." *Ruff v. King County*, 125 Wn.2d 697, 703-704, 887 P.2d 886 (1995) (internal citations omitted).

In addition, while the legal conclusions underlying a dismissal for the failure to join indispensable parties under CR 19 are reviewed de novo, the trial court's decision to dismiss under CR 19 is reviewed for an abuse of discretion. *Gildon v. Simon Prop. Group, Inc.*, 158 Wn.2d 483, 493, 145 P.3d 1196 (2006). Similarly, the trial court's denial of injunctive

relief is also reviewed for an abuse of discretion. *Bauman v. Turpen*, 139 Wn. App. 78, 93, 160 P.3d 1050 (2007).

VI. ARGUMENT

A. The Quinault Indian Nation Asserts Ownership Interests in Lake Quinault.

The Quinault Indian Nation asserts an interest in Lake Quinault that is based in the Nation's treaty rights under the Treaty of Olympia and the subsequent November 4, 1873 Executive Order signed by President Grant which established their reservation. *See The Quinaielt Tribe of Indians v. United States*, 102 Ct. Cl. 822 (1945). *See also Mason v. Sams,* 5 F.2d 255 (W.D. Wash. 1925). CP at 120-33. As the Nation has argued, the "Quinault Reservation . . . tapers to Lake Quinault about 21 miles inland, which is contained within the reservation and represents its easternmost portion . . . the boundaries of the reservation include the entire lake [and] the United States holds title to the bed of the entire lake in trust for the Indians of the Quinault Reservation." CP at 92. *See also* Affidavit of Thomas Landreth in Support of Petition for Writ of Mandate, Attachment, May 2007 Letter from Fawn R. Sharp, "On behalf of the Quinault Indian Nation, I am writing to alert you that the Nation owns the bed of Lake Quinault to the ordinary high water mark." CP at 321.

The Nation also notes that the United States Department of the Interior, Office of the Solicitor has concluded that the Nation "owns the entire lakebed of Lake Quinault because the entire lake falls within the boundaries of the Reservation, which was established prior to Washington entering into statehood." CP at 339. However, whether or not the Nation actually owns Lake Quinault cannot be adjudicated in this appeal. What is relevant here is that the Nation has a longstanding claim to the Lake, and because of this claim the trial court properly concluded that the Nation and the United States are indispensable parties which, because of their sovereign immunity, cannot be joined.

1. The Nation and the United States Are Immune From Unconsented Suit in State or Federal Court.

Indian tribes "are sovereign entities and are therefore immune from nonconsensual actions in state or federal court." *Confederated Tribes of the Chehalis Indian Reservation v. Lujan*, 928 F.2d 1496, 1499 (9th Cir. 1991). It is undisputed that the Quinault Indian Nation has not waived its immunity, and accordingly cannot be joined in this action. *Id.* Similarly, the United States, which the Nation asserts holds title to the bed of Lake Quinault in trust for the Nation, also has sovereign immunity, and as such

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is also immune from nonconsensual suit. *See United States v. Lee*, 106 U.S. 196, 205-07, 1 S. Ct. 240 (1882); *see also United States v. Navajo Nation*, 537 U.S. 488, 502, 123 S. Ct. 1079 (2003).

2. Lake Quinault's Navigability Is Not Material to Whether or Not the Nation Claims an Interest in the Lake Under Its Treaty.

As the Landreths point out, upon entry into the Union the State of Washington obtained title to the beds of its navigable waters. Br. of Appellant at 3-4. The states, upon entry into the Union, "became themselves sovereign; and in that character hold the absolute right to all their navigable waters and the soils under them for their own common use, subject only to the rights since surrendered by the Constitution to the general government." *Idaho v. Coeur d'Alene Tribe*, 521 U.S. 261, 283, 117 S. Ct. 2028 (1997) (quoting *Martin v. Waddell's Lessee*, 41 U.S. 367, 16 Pet. 367 (1842)).

While the Landreths assert that the navigability of Lake Quinault is undisputed,[1] and therefore title to the Lake was transferred from the federal government to the State of Washington upon statehood, their

[1] The question of the navigability of Lake Quinault may be disputed but is not material to this case. *See* CP at 166 (State reserved objections to Request for Admission 1, and without waiving those objections, responded that the Lake *may* be navigable for some purposes). Similarly, whether the Lake falls within the purview of the public trust doctrine may also be disputed, but it is not necessary for the Court to make that determination. Even if the Lake is subject to the public trust doctrine, as the State discusses below, the Landreths have not asserted any valid claims under that doctrine.

argument fails to adequately address another important principle of federal law. Br. of Appellant at 3. The United States may transfer title of the bed of a navigable water to an Indian tribe prior to statehood, thereby defeating the future state's title. *See United States v. Idaho,* 533 U.S. 262, 281, 121 S. Ct. 2135 (2001) (in a dispute between the Coeur d'Alene tribe and the State of Idaho over ownership of a portion of Lake Coeur d'Alene, the Supreme Court concluded that Congress "intended to bar passage to Idaho of title to the submerged lands at issue . . .").

Despite the Landreths' assertions to the contrary, whether or not the Nation's authority over Lake Quinault has ever been adjudicated is not material to whether or not the Nation *claims* an interest in the Lake. As discussed below, whether the Nation claims an interest in the Lake is the relevant question for the analysis under both RCW 7.24.110 and CR 19.[2]

Because the Nation claims ownership of the bed of Lake Quinault, any evaluation of the merits of the Landreths' causes of action in the present case would require the Court to first determine whether the Nation has a valid ownership claim or whether the State of Washington holds title to the Lake. Thus, there is no merit to the Landreths' assertion that they are "not asking the court to determine the scope of the Nation's rights in

[2] None of the cases cited by the Landreths support their contention that "the State must presume it has regulatory authority over the navigable water of the Lake in the absence of an adjudication of the Nation's claim." Br. of Appellant at 5-8.

the Lake." Br. of Appellant at 8. A determination that the Lake is owned by the State of Washington, which is the premise of the Landreths' claim, would necessarily impact the Nation's claim to title under its treaty. Contrary to the Landreths' arguments, this makes the Nation much more than an "interested" party to this case. Br. of Appellant at 1.

B. The Trial Court Properly Concluded That the Landreths Are Not Entitled to Declaratory Relief Under the UDJA.

Although it appears that the Landreths may have abandoned their claims for declaratory relief under the UDJA, they also assert in their brief that the trial court erred by dismissing their claims for declaratory and injunctive relief. Br. of Appellant at 3. Accordingly, while the Landreths did not brief the requisite legal standards for obtaining relief under the UDJA, the State will do so here because the Landreths appear to assign error to the trial court's dismissal of their declaratory claims.

1. The Nation Claims an Interest That Would Be Affected by a Declaration and Must Be Joined Under RCW 7.24.110 for the Court to Proceed Under the UDJA.

The trial court properly dismissed the Landreths' claims for declaratory relief under the UDJA. The UDJA is codified at RCW 7.24 and contains specific requirements that a party must meet before the superior court can issue a declaratory judgment. Among these requirements, a party seeking a declaratory judgment must join necessary

and indispensable parties. *See* RCW 7.24.110. In the present matter, the Landreths are seeking a declaratory ruling that the bed of Lake Quinault is owned by the State of Washington, which would accordingly divest the Nation and the United States of any competing interests. CP at 33. The Landreths are also seeking a declaration and a writ to ensure the public's access to Lake Quinault, and to order Commissioner Goldmark to discharge his alleged duties under the public trust doctrine and the Washington State Constitution. *Id.* The Landreths' requested relief, if granted, would necessarily require the State to take some form of enforcement action against the Nation at Lake Quinault. CP at 33-34. Under these circumstances, the Quinault Indian Nation and the United States are indispensable, and accordingly, the trial court properly concluded that it could not proceed to grant the Landreths' requested relief under the UDJA.

Under RCW 7.24.110, when an action for declaratory relief is brought under the UDJA, "all persons shall be made parties who have *or claim* any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding." (emphasis added). The parties do not dispute that the Nation claims an interest in the bed of Lake Quinault. Br. of Appellant at 1. The joinder requirements of RCW 7.24.110 are mandatory as "[t]he trial court

lacks jurisdiction if the necessary parties are not joined." *Treyz v. Pierce County,* 118 Wn. App. 458, 462, 76 P.3d 292 (2003).

In *Bainbridge Citizens United v. DNR*, 147 Wn. App. 365, 198 P.3d 1033 (2008), a citizen's group sought a declaration under the UDJA that DNR had failed to enforce its own regulations by not ejecting alleged trespassers on state-owned aquatic lands. *Id.* at 369. The citizens group did not join as parties any of the alleged trespassers. *Id.* at 371. In dismissing the UDJA action for failing to join the alleged trespassers, the Court of Appeals stated that "a party seeking a declaratory judgment must join 'all persons . . . who have *or claim* any interest which would be affected by the declaration.'" *Id.* at 372 (emphasis added). A person is necessary and must be joined in a UDJA action if "(1) the trial court cannot make a complete determination of the controversy without that party's presence, (2) the party's ability to protect its interest in the subject matter of the litigation would be impeded by a judgment in the case, and (3) judgment in the case necessarily would affect the party's interest." *Id. See also Nw. Greyhound Kennel Ass'n Inc. v. State*, 8 Wn. App. 314, 319, 506 P.2d 878 (1973) (licensees under Horse Racing Act were indispensable parties, and failure to join them in the action "deprived the court of jurisdiction to hear and decide the issues raised.").

Unlike the requirements of CR 19, which require some equitable balancing in evaluating whether a party is "necessary" versus "indispensable," and an exercise of discretion in evaluating these factors,[3] the joinder requirements of RCW 7.24.110 are a statutory prerequisite to obtain review under the UDJA. *Treyz,* 118 Wn. App. at 462. If those requirements are not met, the trial court has no discretion to proceed under the UDJA.

Under the requirements of RCW 7.24.110 and the three-part test of *Bainbridge Citizens United*, the trial court could not issue a declaratory order regarding the ownership of Lake Quinault without prejudicing the rights of the Nation and the United States. Obtaining a declaration that Lake Quinault is owned by the State of Washington would prejudice the Nation's claimed interest and the interest of the United States as trustee for the Nation. As such, the trial court properly dismissed the Landreths' UDJA claims.

2. Review Under the UDJA Is Not Available to Challenge How the State Is Applying or Enforcing State Law.

The Landreths' UDJA claims also fail because they are seeking review of how the State is applying or administering state law, as opposed

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[3] *See Gildon*, 158 Wn.2d at 493 (recognizing that an analysis under CR 19 requires a "balancing and factual inquiry" and is reviewed under an abuse of discretion standard). The applicability of CR 19 to the Landreths' mandamus and injunctive relief claims is discussed in more detail below.

to challenging the facial validity of a statute or rule. This type of review is not available under the UDJA and provides a second, independent reason to affirm the dismissal of their UDJA claims.

The scope of the Court's review under the UDJA is set forth under RCW 7.24.020, which provides that:

> A person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

The Court of Appeals has found that this language precludes UDJA review of the application or administration of a statute or rule.

In interpreting RCW 7.24.020, the Court of Appeals in *Bainbridge Citizens United* recognized that "[d]eclaratory judgment actions are proper 'to determine the *facial validity of an enactment, as distinguished from its application or administration.*'" *Bainbridge Citizens United*, 147 Wn. App. at 374 (emphasis added) (citing *City of Federal Way v. King County,* 62 Wn. App. 530, 535, 815 P.2d 790 (1991)). The issue in *Bainbridge Citizens United* was whether DNR properly applied or administered its rules by not enforcing those rules in the manner that plaintiffs demanded. *Id.* at 375. Denying plaintiffs' claims under the UDJA, the *Bainbridge Citizens United* court stated that "[b]ecause United does not challenge the

regulations' facial validity, a declaratory judgment is not an available remedy under the power specifically enumerated in RCW 7.24.020." *Id.*

Similar to the plaintiffs in *Bainbridge Citizens United*, the Landreths in the present matter brought an action under the UDJA challenging how the State of Washington and its Commissioner of Public Lands are applying or administering state law regarding Lake Quinault. CP at 24-28. Such relief is not available under the UDJA, and therefore the Landreths are not entitled to declaratory relief.

C. The Trial Court Properly Dismissed the Landreths' Petition for a Writ of Mandamus Because Mandamus Is Not Available to Order a Discretionary Action or to Order General Compliance With State Law.

In addition to their UDJA claims, the Landreths requested a writ of mandate, also known as a writ of mandamus, to have the trial court order the Commissioner of Public Lands to "discharge the mandatory duties imposed upon him pursuant to the public trust doctrine and the Washington State Constitution." CP at 33. What the Landreths are essentially asking the Court to do is order the Commissioner of Public Lands to take uncertain actions against the Quinault Indian Nation to enforce a nondescript duty under the public trust doctrine and state constitution. A writ of mandamus is not appropriate for this purpose. How the State interacts with the Quinault Indian Nation with regard to

Lake Quinault necessarily involves the exercise of discretion, and a writ of mandamus will not issue "where the act to be performed is a discretionary act." *Ahmad v. Town of Springdale*, 178 Wn. App. 333, 341-42, 314 P.3d 729 (2013). This is especially true here, because the requested writ could be viewed as directing the State to divest an Indian tribe of an asserted interest over part of its reservation.

Moreover, the trial court correctly determined that the Landreths' request for a writ of mandamus is inappropriate because the Landreths are seeking an order to compel general compliance with state law. CP at 3, 33. A court cannot issue a writ of mandamus "to compel a general course of conduct, only specific acts." *County of Spokane v. Local #1553 American Fed'n of State, Cty., & Mun. Emps.*,76 Wn. App. 765, 769-70, 888 P.2d 735 (1995) (Writ not appropriate as it was not "directed at a specific act or limited to a specific period of time."). *See also Walker v. Munro,* 124 Wn.2d 402, 407-09, 879 P.2d 920 (1994) ("[i]t is hard to conceive of a more general mandate than to order a state officer to adhere to the constitution.").

Similar to the Landreths' requested writ in the present matter, the petitioners in *Walker v. Munro* sought a writ from the Supreme Court ordering the Secretary of State to "adhere to the requirements of the Washington State Constitution . . ." *Id.* at 407. The court declined to

issue the writ, stating that "Mandamus will not lie to compel a general course of official conduct, as it is impossible for a court to oversee the performance of such duties. . . . [w]e have consistently held that we will not issue such a writ." *Id.* at 408. Accordingly, the trial court properly dismissed the Landreths' claims for a similar writ in this case.

1. The Public Trust Doctrine Does Not Establish a Mandatory Duty for the State to Intervene in a Dispute Between Citizens.

Without specifying what action the State must take, the Landreths argue that Washington's public trust doctrine imposes a mandatory duty on the State to act on their behalf. Br. of Appellant at 3, 17-25. The Landreths misunderstand the public trust doctrine. The public trust doctrine does not provide authority to compel the State to take action against the Nation to quell the Landreths' fears over their access to Lake Quinault.

Under some circumstances, Washington's public trust doctrine may affect its power to legislate with regard to certain waters of the state. For example, the doctrine may "prohibit[] the State from disposing of its interest in the waters of the state in such a way that the public's right of access is substantially impaired, unless the action promotes the overall interests of the public." *Weden v. San Juan County*, 135 Wn.2d 678, 698-99, 958 P.2d 273 (1998) (citation omitted). Hence, the doctrine serves

primarily as a limitation on state action. Here, the Landreths cannot point to any act by the State that purports to dispose of the public interest in the State's waters. Instead, without specifying what the State must do, the Landreths argue that the State must somehow intervene on their behalf to confront the Nation regarding the Nation's actions with respect to the Lake. CP at 30-32.

The public trust doctrine, moreover, is defined by Washington law, because "each state individually determines the public trust doctrine's limitations within the boundaries of the state." *Wash. State Geoduck Harvest Ass'n v. DNR*, 124 Wn. App. 441, 451, 101 P.3d 891 (2004). In their discussion of the public trust doctrine, the Landreths cite multiple public trust doctrine cases from Washington and other jurisdictions, but fail to identify any precedent that would support compelling the State to act to vindicate particular access rights claimed under the public trust doctrine by citizens of this state. *See* Br. of Appellant at 18-25.

While the public trust doctrine may support a private cause of action to protect public access rights in some circumstances, *see Wilbour v. Gallegher,* 77 Wn.2d 306, 462 P.2d 232 (1969) (ordering removal of fill from Lake Chelan that impaired public rights of navigation), it does not serve as a vehicle for compelling the State to

vindicate access rights asserted by individual citizens against others.[4] How the State chooses to enforce rights of the public under the public trust doctrine inherently involves significant discretion. Public use of state-owned submerged lands creates multiple and often conflicting demands on public trust resources. *See, e.g.*, RCW 79.105.010 ("The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage . . . The legislature further finds that aquatic lands are faced with conflicting use demands"); RCW 79.105.030 ("the manager of state-owned aquatic lands shall strive to provide *a balance of public benefits for all citizens of the state"*) (emphasis added).

The discretion that surrounds the State's executive choices with regard to a dispute over Lake Quinault demonstrates why the trial court properly declined to issue a writ of mandamus. *See Ahmad*, 178 Wn. App. at 341-42. Moreover, the Landreths do not identify what action they argue the State must take, and therefore fail to provide the specificity necessary for a writ of mandamus. *See County of* Spokane, 76 Wn. App. at 769-70 (writ of mandamus not available "to compel a general course of conduct, only specific acts."). Accordingly, the trial court's dismissal of the

[4] It is instructive here that while the Court in *Wilbour* lamented the absence of State and local action to prevent loss of public access to navigable waters on Lake Chelan, the court never suggested that it could compel the State to act to vindicate public access rights. *See Wilbour*, 77 Wn.2d at 316 n.13.

Landreths' petition for a writ of mandamus under the public trust doctrine was correct and should be affirmed.

D. The Trial Court Properly Applied CR 19 as a Separate Basis for Dismissing the Landreths' Claims. The Nation and the United States Are Necessary and Indispensable Parties That Cannot Be Joined Due to Their Sovereign Immunity.

The trial court properly applied CR 19 as a separate basis for dismissing the Landreths' claims. Under CR 19, a trial court undertakes a two-part analysis. First, "the court must determine whether a party is needed for just adjudication." *Gildon*, 158 Wn.2d at 494-95. Second, "if an absent party is needed but it is not possible to join the party, the court must determine whether in 'equity and good conscience' the action should proceed among the parties before it or should be dismissed, the absent party being thus regarded as indispensable." *Id.* The factors a court must consider in making this determination include:

> (1) to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; (2) if there is prejudice, the extent to which, by protective provisions in the judgment, by shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the person's absence will be adequate; (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

Id. at 495; CR 19(b).

1. The Supreme Court's Decision in *AUTO* Is Distinguishable From the Facts of This Case.

In *Automotive United Trades Org. (AUTO) v. State*, 175 Wn.2d 214, 285 P.3d 52 (2012), our Supreme Court addressed the issue of whether the tribes were necessary and indispensable parties to a suit challenging the constitutionality of fuel tax compacts between the State of Washington and the tribes. The court found that while the tribes were necessary parties, they were not indispensable. *Id.* at 235. In applying the CR 19(b) analysis, the court noted that "CR 19 focuses on whether a party *claims* a protected interest, not whether it *actually has* one." *Id.* at 224 (emphasis in original).

The *AUTO* court conducted its CR 19 analysis and determined that, although the tribes had a financial stake in the compacts, "[a] mere financial stake in the action's outcome . . . [would] not suffice" to make the tribes indispensable and require dismissal. *Id.* The *AUTO* court concluded that, because no other forum was available to plaintiff and because the tribes' contractual interest in the compacts did not outweigh broader public interests, the suit could proceed without the tribes. *Id.* at 233-34. Unlike *AUTO*, the Landreths are not merely challenging a tribe's financial interest in a contract. Rather, they are seeking to force actions

that, from the perspective of the absent Quinault Indian Nation, would cloud or divest it of its asserted interest in Lake Quinault.

In this case, the Landreths apparently concede, as they must, that the first three CR 19(b) factors weigh in favor of dismissal. Br. of Appellant at 15-16. Any judgment rendered here would be highly prejudicial to the Nation and the United States. Moreover, there is no way to shape any relief which would avoid this outcome, and even if the trial court had granted the Landreths' relief, it would not have been adequate because the Nation could still continue to assert ownership over Lake Quinault.

The Landreths urge the Court to conclude, however, that the fourth CR 19(b) factor, "whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder," outweighs the others because they will be left without a forum if the Court upholds the dismissal of their complaint. Br. of Appellant at 15-16. To support their position, the Landreths rely on *AUTO,* but ignore that case's admonition that CR 19(b) involves "a careful exercise of discretion and defies mechanical application." *AUTO*, 175 Wn.2d at 229. Accordingly, "courts must carefully consider the circumstances of each case in balancing prejudice to the absentee's interests against the plaintiff's interest in adjudicating the dispute." *Id.* at 233. In this case, proceeding in the absence of the Nation

would be significantly more prejudicial to the Nation's interests by dealing with title in its absence. In contrast, *AUTO* focused on the lawfulness of a fuel tax refund system where the prejudice was limited to the tribes' interests in receiving payment.

The facts in *AUTO* presented a very close case for indispensability under CR 19(b). Five justices reasoned that the balance of the CR 19(b) factors "tips in favor" of proceeding in the absence of tribes whose contracts would be impaired by a decision because the case raised "constitutional questions about government conduct" and only implicated the "absentee's contractual interests." *Id.* at 233-34. Four justices argued, however, that dismissal was appropriate because the interest of the absent tribes that would be impaired outweighed the plaintiffs' interest in adjudicating the dispute. *Id.* at 242 (Fairhurst J., dissenting). This case is far different. Here, judgment for the Landreths would impair ownership rights claimed by the Nation rather than merely interfere with an interest in receiving payment under a state contract. Accordingly, the trial court properly found that, on balance, the CR 19(b) factors weighed heavily in favor of dismissal.

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2. Tribes Have an Interest in Preserving Their Sovereign Immunity and Have a Right Not to Have Their Legal Duties Judicially Determined Without Consent.

When analyzing cases under CR 19, Washington courts look to federal cases for guidance. *AUTO,* 175 Wn.2d at 223. Federal cases make it clear that "tribes have an interest in preserving their own sovereign immunity, with its concomitant 'right not to have [their] legal duties judicially determined without consent.'" *Shermoen v. United States*, 982 F.2d 1312, 1317 (9th Cir.) (citing *Enter. Mgmt. Consultants, Inc. v. United States,* 883 F.2d 890, 894 (10th Cir. 1989)). The interest of a tribe in preserving its sovereign immunity is particularly compelling when a suit implicates rights claimed by the tribe under treaty. *Skokomish Indian Tribe v. Goldmark*, 994 F. Supp. 2d 1168, 1187 (W.D. Wash. 2014) (tribes with rights under a treaty "have a vital, legally protected interest in how the Treaty is interpreted and enforced.") (collecting cases). Federal cases also make it clear that the United States "is a necessary party to any action in which the relief sought might interfere with its obligation to protect Indian lands against alienation." *Carlson v. Tulalip Tribes of Washington*, 510 F.2d 1337, 1339 (9th Cir. 1975). *See also Minnesota v. United States*, 305 U.S. 382, 386, 59 S. Ct. 292 (1939) ("A proceeding against property in which the United States has an interest is a suit against the United States.").

Here, the Landreths' claims challenge whether the Nation owns Lake Quinault, as the Nation asserts, or whether the State of Washington owns the Lake subject to state public trust concepts, as the Landreths contend.[5] A decision by the Court thus has significant consequences for the Nation directly in its capacity as a self-governing sovereign Indian Tribe. *Northern Arapahoe Tribe v. Harnsberger,* 697 F.3d 1272, 1279 (10th Cir. 2012). A ruling that the Lake is a public resource would purport to displace the Nation of its interests. *Id.* Such a ruling would also impact the United States, who asserts ownership as trustee for the Nation.

The Landreths' interest in adjudicating the dispute here is also less compelling than the plaintiffs' interest in *AUTO* because a judgment in the Landreths' favor would be of limited value in resolving their asserted dispute over Lake Quinault. Whereas in *AUTO*, a ruling in favor of the plaintiffs would have resolved the central issue in the case by barring the state from making payments to the absentee tribes under unconstitutional contracts, a ruling in favor of the Landreths here, although prejudicial to the Nation, would not bind the Nation. Presumably, it would continue to

[5] Because granting the Landreths' requested relief would necessarily require the Court to determine the Nation is not entitled to the Lake, the Landreths' claims are analogous to a request to allocate a limited resource: an award to one claimant necessarily reduces the share available to absent claimants. Courts have noted that such circumstances "present a textbook example . . . where one party may be severely prejudiced by a decision in his absence." *Skokomish Indian Tribe*, 994 F. Supp. 2d at 1188 (quoting *Wichita & Affiliated Tribes of Okla. v. Hodel,* 788 F.2d 765, 775 (D.C. Cir. 1986)).

assert ownership and authority over the Lake. *See Lujan*, 928 F.2d at 1498. Moreover, the Landreths' claim could subject both the Nation and State to substantial risk of multiple or inconsistent legal obligations. *Id.*

Accordingly, because the Landreths' interest in adjudicating the dispute is significantly outweighed by the prejudice to the Nation's interest in the Lake, and the State's interest in avoiding multiple inconsistent judgments, the trial court properly determined the Nation and the United States are indispensable under CR 19(b).

E. The Trial Court Properly Exercised Its Discretion in Denying the Landreths' Injunctive Relief.

Motions for an injunction are addressed to the "sound discretion" of the trial court. *Wash. Fed'n of State Emp. Council 28, AFL-CIOs v. State*, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983). A trial court "abuses its discretion if its ruling is manifestly unreasonable or it exercises discretion on untenable grounds or for untenable reasons." *Bauman,* 139 Wn. App. at 93. To obtain injunctive relief, a party must show:

> (1) that he has a clear legal or equitable right, (2) that he has a well grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.

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Tyler Pipe Indus. v. Dep't of Revenue, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982) (quoting *Port of Seattle v. Int'l Longshoremen's & Warehousemen's Union,* 52 Wn.2d 317, 319, 324 P.2d 1099 (1958)).

The trial court exercises its discretion to issue an injunction based on the facts of the case and will not issue an injunction in a doubtful case. *Tyler Pipe*, 96 Wn.2d at 793. If a party fails to demonstrate *any* one of the *Tyler Pipe* factors, the court must deny the requested injunction. *San Juan County v. No New Gas Tax*, 160 Wn.2d 141, 153, 157 P.3d 831 (2007).

The trial court in this case properly exercised its discretion in denying the Landreths' injunctive relief. As discussed above, the Landreths do not have a clear legal or equitable right to relief under the public trust doctrine. Moreover, because the Nation's claim to Lake Quinault under the Treaty of Olympia is longstanding, the Landreths' fear of an immediate invasion by the Nation of any right they allegedly have under the public trust doctrine is not well founded. Accordingly, the Landreths do not have a well-grounded fear of immediate invasion of any of their alleged rights. Finally, for the reasons outlined above, both the Nation and the United States are necessary and indispensable parties which, because of their sovereign immunity, cannot be joined in this action. Under CR 19 and the test outlined in *Tyler Pipe*, the trial court

properly dismissed the Landreths' claims for injunctive relief, and this Court should affirm that decision.

VII. CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the trial court's order granting summary judgment to the State in its entirety.

RESPECTFULLY SUBMITTED this 30th day of June, 2016.

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CERTIFICATE OF SERVICE

I certify that I caused a copy of the foregoing document to be served on all parties or their counsel of record on June 30, 2016, as follows:

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I certify under penalty of perjury, under the laws of the state of Washington, that the foregoing is true and correct.

DATED this 30th day of June, 2016, at Olympia, Washington.

LISA F. ELLIS
Legal Assistant
Natural Resources Division

WASHINGTON STATE ATTORNEY GENERAL

June 30, 2016 - 11:27 AM

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